IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 611 OF 2006

1. Deepak Kochhar]
2. Rajeev Kochhar]
both of Mumbai, Indian inhabitants,]
residing at 6, Rakhi Mahal, Opp. CCI]
Dinshaw Vachha Road, Churchgate,]
Mumbai - 400 020.] .. Petitioners

Versus

1. HDFC Bank Ltd., a Company]
incorporated under the provisions of]
the Companies Act, 1956 and having]
its Registered Office at HDFC Bank]
House, Senapati Bapat Marg, Lower]
Parel, Mumbai - 400 013.]

2. Debts Recovery Tribunal No.1,]
Mumbai.]

3. Debts Recovery Appellate Tribunal,]
Mumbai, both Nos.2 and 3 Tribunals]
under the provisions of The Recovery]
of Debts due to Banks & Financial]
Institution Act, 1993 having their]
offices at Scindia House, 4th and]
5th Floor, Ballard Pier,]
Mumbai - 400 038.]

4. Official Liquidator, High Court]
Bombay, being Provisional Liquidator]
of Credential Finance Ltd., having]
his office at 5th Floor, Bank of]
India Building, M.G. Road, Fort,]
Mumbai - 400 001.] .. Respondents

Mr. Navin Parikh with Mr. J.P. Sen and G.R. Mehta for the petitioners.

Mr. B. Colabawala with Mr. Mihir Modi and Mr. K. Rajesh i/b K. Ashar & Co. for respondent No.1. for the respondents.

Mr. V.S. Patole, Assistant Official Liquidator present.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 31ST MARCH, 2006

ORAL JUDGMENT. :

. Rule. Heard forthwith.

2. The petitioners had preferred an Appeal before respondent No.3. They also applied for waiver of deposit in preferring the Appeal. Respondent No.2 by the order of 20th June, 2003, was pleased to direct the petitioners to deposit a sum of fifty percent of Rs.3,65,00,000/- within 8 weeks of the order. The petitioners admittedly did not deposit the amount. As a consequence thereof, on the expiry of the period of 8 weeks, the Appeal stood dismissed pursuant to the impugned order of 20th June, 2003. The present Petition came to be filed on 18th February, 2006. The main challenge, as urged on behalf of the petitioners by the learned counsel, is that considering the language of Section 20 of The Recovery of Debts Due To Banks & Financial Institutions Act, 1993 [which hereinafter shall be referred to as "RDB Act"] read with Section 21, it is only in the event an Appeal has been preferred against an order made under Section 19 of the Act would

the requirement of deposit under Section 21 arise. In the instant case, it is pointed out that the impugned order was not passed under Section 19 and consequently, the order is liable to be set aside.

3. A few facts may now be stated. There is no dispute that the petitioners had taken a loan from the predecessor in title of respondent No.1. The predecessor in title had filed a suit which was numbered as Suit No.1467 of 1998 for recovery of its dues under a letter of credit facility and under a cash credit facility. Consent Decree came to be passed on 30th September, 1998. It is not necessary to go into the terms of the Consent Decree. The proceeding which were filed before this Court pursuant to the RDB Act coming into force were transferred to the Dent Recovery Tribunal and were renumbered as Original Application No.542 of 2001. It is pointed out that the OA is still pending against defendants No.4 to 7 in the said OA. Respondent No.1 filed Misc. Application No.35 of 2002 under Section 31 of the RDB Act 1993, for a Recovery Certificate based on the Consent Decree. On 27th September, 2002, the Recovery Certificate was issued for Rs.3,65,00,000/- with interest as prayed for by the respondents. Against that order, the Company preferred an Appeal and took out the application for waiver where

the impugned order came to be passed.

4. From the above facts, let us examine the contentions as urged on behalf of the petitioners herein. Firstly, under the RDB Act, if a decree or order passed by a Civil Court before the RDB (Amendment) Act of 2000 had not been executed, the decree-holder could apply to the Tribunal to pass an order for recovery of the amount. On receipt of the application, the Tribunal had to issue a Certificate of Recovery to a Recovery Officer. On receipt of a Certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a Certificate in respect of a debt recovery under this Act. It is the Certificate which can be the subject matter of the recovery proceedings. Section 19 of the RDB Act is the provision for making the application based on which an order could be passed under Section 19(20). Based on that order, a Certificate for recovery could be issued under Section 19(22).

5. We may now quote sub-sections (1) and (2) of Section 20 which read as under:

> "**20. Appeal to the Appellate Tribunal.-** (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed

> to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.
>
> (2) No Appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties."
>
> .....

. It will thus be clear that if the order had been passed, based on Consent Terms filed before the Tribunal, no Appeal would lie under Section 20(2) of the RDB Act. Similarly, it may be noted that the Consent Decree obtained before a Civil Court under the provisions of the Code of Civil Procedure is also non appealable. What the petitioners are now trying to contend is that though if the procedure had been initiated under the RDB Act and as Consent Terms had been filed and they had no remedy of an Appeal, nonetheless because the Certificate had been issued under Section 31A, there is no bar as the express language of Section 21 specifically provides that the said Section will apply in cases where order is passed under Section 19. We have earlier noted that the language used in section 20(1) of the RDB Act is not only an order made, but also deemed to have been made by the Tribunal under this Act. The order deemed to have been made can only be an order under Section 31A. A Certificate of recovery can only be issued on the

Tribunal coming to the conclusion that there is a debt which is due and payable and application to the Tribunal for an order for recovery of the amount. It is based upon that, that the Certificate of Recovery is issued. It would, therefore, be clear that the order passed under 31A is an order deemed to have been made under Section 20 of the RDB Act. Once it is an order made under Section 20(1) of the RDB Act, it has to be construed as an order passed by consent and if that be the case, the question of the petitioners preferring an Appeal will not at all arise. The Petition, on that count itself, has to be rejected. In view of this, the question whether Section 21 is attracted on the facts of this case need not be decided.

6. The matter may be looked at from another angle. If it is the contention of the petitioners that Section 21 is not attracted because the Appeal is not preferred against an order under Section 19, then Appeal under Section 20 could have been preferred only if the order was passed under Section 19. Accepting the arguments of the petitioners would mean that if there be no order passed under Section 19, no Appeal would lie under Section 20 as the order would be one passed under Section 31A. If the arguments are to be accepted and the order is said to be not a deemed order passed by the

Tribunal, then the Appeal would not be maintainable. On that count also, the Petition will have to be dismissed. We are, however, of the opinion that the Certificate issued under Section 31A will be deemed to be an order under which an Appeal would lie under Section 20. In the instant case, as it was an order based on consent, an Appeal would not be maintainable.

7. For the aforesaid reasons, we find no merit in this Petition which is accordingly dismissed. Rule discharged. There shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]